

Short Form Contractor/Consultancy Services Agreement Terms and Conditions

1 DEFINITIONS

In this Agreement, capitalised words have the meaning given in the Details section, unless otherwise defined below.

2 OBLIGATIONS OF THE PARTIES

- (a) You must perform the Work in accordance with this Agreement and any reasonable directions given by us.
- (b) We must pay to you the Rates or Milestone Amounts, as applicable.
- (c) We may extend, by not longer than the Permitted Extension Period, any date for completion of a Milestone or the Work.
- (d) You must ensure that employees or contractors engaged to perform the Work are appropriately trained, qualified, experienced and competent in all Work requirements and that they perform the Work in a professional manner and in accordance with this Agreement.
- (e) If the Work involves you preparing a report, the report will be provided in a style consistent with our Writing Style Guide and in a format suitable for publication and we may notify you within 10 business days from receiving a report if we do not accept it, in which case we may require you to submit a revised report or provide additional information, or we may immediately terminate this Agreement in accordance with clause 13.1.
- (f) If you provide research or evaluation as part of the Work, you will provide us with all raw data collected as part of the Work, in both identified (for our reference) and de-identified (for publication) form and ensure you obtain all permissions, consents and licences to enable this.
- (g) Data provided to us must be provided in a machine readable format, with a data dictionary and with metadata in accordance with the [DataVic Access Policy Standards and Guidelines](#).
- (h) During the Term and for seven years after the expiration or termination of this Agreement:
 - (i) you must keep all records relevant to this Agreement, including all Background and Project Intellectual Property and accounting records (**Project Records**);
 - (ii) we or our auditor may, at our own cost and upon reasonable notice, conduct inspections and audits of the Project Records and take copies of the Project Records.

3 COMPLIANCE WITH LAWS AND STANDARDS

- (a) You must carry out the Work in a professional manner and:
 - (i) in a manner that ensures the safety of persons and property; and
 - (ii) in accordance with all laws, codes and standards, and our and the Victorian Government's lawful requirements or policies applicable to the provision of the Work, including occupational, health and safety laws and standards, the [Code of Conduct for Victorian Public Sector Employees 2015](#) (if relevant), environmental laws and notices from the Environment Protection Authority or any other regulatory body, and you have read and aspire to comply with the Victorian government [Supplier Code of Conduct](#).
- (b) You must use your best endeavours to have systems, equipment and/or procedures in place to minimise environmental impacts and immediately rectify any breach of any standard or procedure to our satisfaction.
- (c) You must ensure that any information or representation provided by you about your environmental practices in any quotation document in relation to the Work is accurate and you comply with any such practices in the performance of this Agreement.
- (d) You must not do or fail to do anything that may damage or bring into disrepute, or attract public or media attention which may be detrimental to, our or the Victorian Government's reputation or messages.
- (e) You must comply with our data security requirements (including our security policy), as notified to you, in relation to access and use of data. You must provide independent certification of compliance with our data security requirements upon our request and notify us immediately, and comply with our directions, if you become aware of any breach of those requirements.

4 INVOICING AND PAYMENT

4.1 Submission of invoice

- (a) You must submit to us a tax invoice:
 - (i) monthly, within 30 days from completion of each Milestone or as we direct; and
 - (ii) in accordance with the Rates or Milestone Amounts (as applicable).
- (b) Each invoice must be accompanied by the Required Evidence and any other evidence we reasonably require to substantiate the completion of a Milestone or the Work.
- (c) We will pay all invoiced amounts which comply with clauses 4.1(a) and 4.1(b) and are not in dispute within 30 days of receipt of the invoice.

4.2 Entitlement to payment and obligation to reimburse

- (a) You are not entitled to payment for any Work or for tasks undertaken in respect of any Milestone or reimbursement of any kind if:
 - (i) you have not invoiced us within 90 days after completion of the relevant Milestone or the Work;
 - (ii) such payment would exceed the Rates or relevant Milestone Amount (as applicable), to the extent of such excess; or
 - (iii) in our opinion:
 - (A) this Agreement has not been complied with; or
 - (B) the Work is not making satisfactory progress.
- (b) You must reimburse us for any amount already paid by us that, in our opinion, was:
 - (i) not used for, or applied to, the Work in accordance with this Agreement;

- (ii) paid in circumstances where we are not satisfied that the Work was or is making satisfactory progress; or
- (iii) paid in circumstances where you have not complied, or subsequent to the payment do not comply, with this Agreement.

4.3 Right of set-off

Without disadvantage to any other rights, we may deduct from amounts otherwise payable to you, amounts which are payable to us, whether under this Agreement or otherwise.

4.4 Interest on overdue amounts

- (a) We will, on demand by you, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- (b) For the purpose of clause 4.4(a) **overdue amount** means an amount (or part) not in dispute, due and owing under a valid tax invoice and outstanding for more than 30 days from the date of receipt of the invoice or the date the amount was no longer disputed, as the case may be.

5 GST

- (a) In this clause 5, additional defined terms have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless otherwise specified, the consideration specified in this Agreement excludes any amount for GST.
- (c) If a Supply under this Agreement is subject to GST, the Party paying for the supply must pay to the Party making the Supply (**supplier**) an additional amount equal to the amount payable multiplied by the applicable GST rate (**additional amount**).
- (d) The additional amount is payable at the same time as the consideration for the supply is payable or to be provided, subject to receipt of a Tax Invoice from the supplier in relation to the Supply.
- (e) If the additional amount differs from the amount of GST payable by the supplier, the Parties must adjust the additional amount.
- (f) If a Party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified excludes any amount for GST for which the Party is entitled to an Input Tax Credit.

6 INSURANCE

- (a) Subject to any insurance requirements set out in the Details, you must, at your own cost, throughout the Term or longer if required by law, maintain all relevant insurances that a prudent supplier in your industry would be reasonably expected to maintain in order to ensure the successful completion of your obligations under this Agreement including:
 - (i) public and products liability insurance of \$10 million per occurrence; and
 - (ii) professional indemnity insurance of \$5 million per claim.
- (b) Any indemnity proceeds or other payment made to or recoverable by you under any insurance policy for any damage to, loss (including loss of use) or destruction of any property associated with the Work must be promptly applied by you to ensure that such is repaired and reinstated.

7 LIABILITY AND INDEMNITIES

7.1 Your liability and indemnity to us

- (a) You indemnify us, our employees, agents and officers (**Indemnified Parties**) and hold us and each of them harmless against any liability and any other loss, damage (including reputational damage), claim, action or expense (including legal expense) (**Loss**) incurred or suffered by any of them in connection with the Agreement or the Work which arises from or in connection with:
 - (i) any fraudulent, wilful, unlawful, dishonest or negligent act or omission by you or your employees, agents or officers;
 - (ii) any breach of this Agreement by you;
 - (iii) any injury to, or death of, a natural person and any loss of or damage to, real or personal property caused or contributed to by you or your employees, agents or officers; or
 - (iv) any claim, action, demand, or proceeding by a third party against the Indemnified Parties caused or contributed to by you, your employees, agents or officers.
- (b) Your liability under clause 7.1(a) to an Indemnified Party will be reduced to the extent that any negligent act or omission or wilful misconduct by that Indemnified Party directly caused the relevant Loss.

7.2 Our liability to you

Our liability under or in connection with this Agreement is limited in aggregate to an amount equal to the maximum amount payable under the total Rates or the total Milestone Amounts (as applicable) payable by us under this Agreement.

8 PROMOTIONS

- (a) You must obtain our approval prior to releasing any information concerning the Work, the Parties or this Agreement.
- (b) You must obtain our written permission prior to using our or the Victorian Government's name, logo or endorsement (if any) in promotional material and communications relating to the Work.
- (c) We may withdraw any permission given under clause 8(b) at any time, and upon notice of withdrawal you must immediately stop using our and the Victorian Government's name, logo and endorsements.

9 CONFIDENTIALITY

- (a) Subject to this clause 9, each Party must keep information of the other Party which, by its nature is confidential or which is described by the other Party to be confidential (**Confidential Information**) confidential at all times, and must not, without the other Party's written consent:

Short Form Contractor/Consultancy Services Agreement Terms and Conditions

- (i) disclose any Confidential Information to any person; or
 - (ii) use or allow any person to use any of the Confidential Information for any purpose other than the performance of this Agreement.
- (b) A Party may disclose confidential information of the other Party to:
- (i) the extent required by law or in connection with legal proceedings; and
 - (ii) to its professional advisers for purposes connected to this Agreement.
- (c) We may disclose your Confidential Information for public accountability purposes or to enable us to comply with any reporting obligation.
- (d) Each Party consents to the other Party publishing or making available information in relation to the Parties or the Work as may be required by the Auditor-General, to comply with the *Freedom of Information Act 1982* (Vic) or otherwise by law.

10 PRIVACY AND DATA PROTECTION

- (a) For the purposes of this clause 10, **Personal Information** and **public sector data** have the meanings given to them in the *Privacy and Data Protection Act 2014* (Vic) (**Privacy Act**).
- (b) You must, and must procure that your employees, agents, officers and subcontractors comply with:
- (i) the Information Privacy Principles set out in the Privacy Act;
 - (ii) any privacy statement issued by us from time to time (as published on our website);
- (iii) protective data security standards (including the Victorian Protective Data Security Framework established under Part 4 of the Privacy Act); and
- (iv) any other applicable laws, principles, policies and codes dealing with the collection, holding, use, disclosure, storage, management, transfer or granting of access rights to Personal Information and public sector data, in relation to any Personal Information and public sector data collected, held, used, managed, disclosed, transferred or stored in relation to this Agreement and in the same way and to the same extent as we would have been bound had the relevant act been done by us (where applicable).

11 INTELLECTUAL PROPERTY

11.1 Definitions

- (a) In this clause 11:
- (i) Intellectual Property includes patents, know how, copyright, designs, semiconductor or circuit layout rights, trade marks, trade secrets, data, Confidential Information, business or company names and other proprietary rights or any right to registration of such rights, whether created before or after the date of this Agreement and whether protected under common law or statute; and
 - (ii) Services Intellectual Property means all Intellectual Property created by you for the purpose of performing the Work.

11.2 Your warranty

You warrant to us that you have all necessary rights and consents (including any necessary consents to infringe moral rights) in relation to Intellectual Property in any materials, thing or process required or used to perform the Work and to otherwise fulfil your obligations under this Agreement.

11.3 Ownership of Intellectual Property

The Parties acknowledge and agree that:

- (a) all Services Intellectual Property vests in and remains our property and you assign to us all rights in the Services Intellectual Property (including future rights) with effect from the date of their creation;
- (b) our Intellectual Property remains our property at all times; and
- (c) subject to clause 11.3(a), your Intellectual Property remains your property at all times.

11.4 Rights to use Intellectual Property

- (a) You may only use the Services Intellectual Property for the purposes of performing this Agreement. Any modifications you make to the Services Intellectual Property will be deemed to be part of the Services Intellectual Property and will be assigned to us in accordance with clause 11.3(a).
- (b) We may use, modify or otherwise exploit any Intellectual Property incorporated into any Services Intellectual Property (whether owned by you or a third party) (**Background Intellectual Property**) for any purpose consistent with our general objectives and you grant to us a worldwide, irrevocable, non-exclusive, royalty-free, perpetual licence (including the right to sub-license) to use, reproduce, disclose, make public, modify or otherwise exploit the Background Intellectual Property for those purposes.
- (c) For the avoidance of doubt, our right to sub-license under clause 11.4(b) includes the right to do so under any form of creative commons licence (available at creativecommons.org.au).
- (d) You grant to us a worldwide, irrevocable, non-exclusive, royalty-free, perpetual licence to use and reproduce your name, logo and endorsements for the purpose of promoting and reporting the Work.

11.5 Indemnity by you

You indemnify, and must at all times keep us indemnified, against any Loss arising out of or in connection with any infringement or alleged infringement by you or us of the Intellectual Property rights of any third person relating to the Work.

12 CONFLICT OF INTEREST

- (a) You must not, and must ensure your employees, agents and contractors do not, hold any office or possess any property, be involved in any business, trade or calling, or have any obligations under any contract whereby, directly or indirectly, duties or interests are or might be created (or appear to be created) in conflict with your duties and interests under this Agreement.
- (b) You must promptly notify us of any matter which may give rise to a breach of clause 12(a).

13 TERMINATION

13.1 Grounds for termination

Without disadvantage to any other rights we may have, we may terminate this Agreement immediately or on a specified date by issuing a notice to you if:

- (a) you become insolvent, go into liquidation, are wound up, dissolved, commit an act of bankruptcy or enter into a scheme of arrangement with any creditor;
- (b) you appoint, or are appointed, an administrator or receiver;
- (c) any of your officers is found guilty of breaking any law;
- (d) you provide any false or misleading information to us;
- (e) you are found to have misused any amounts provided to you by us;
- (f) you fail to complete any Milestone to our satisfaction;
- (g) you commit a material breach of any of your obligations under this Agreement and:
 - (i) the material breach is not capable of remedy; or
 - (ii) the material breach is not remedied by you within five days of being notified of the material breach by us;
- (h) you commit a breach of clause 2(e), 3(a), 9, 10 or 12; or
- (i) you do anything which brings your, our or the Victorian Government's reputation into disrepute and as a consequence, in our opinion, our continued association with you will or may be detrimental to our or the Victorian Government's reputation or messages, including offering us or our employees or Board members a gift, benefit or hospitality.

13.2 Termination for convenience

Despite any other term of this Agreement, we may terminate this Agreement upon 30 days' written notice to you.

13.3 Payments on termination

- (a) If this Agreement is terminated under clause 13.2, we will pay you only for your reasonable and unavoidable direct costs of performing the Work referable to an Advance Payment (and not the Advance Payment itself).
- (b) If this Agreement is terminated for any reason, you must repay to us all Advance Payments paid by us unless we paid a Milestone Amount that is not an Advance Payment after the relevant Advance Payment. You may deduct from the total of the Advance Payments to be repaid, the amount of your reasonable and direct costs of performing the Work referable to the Advance Payment.
- (c) We are not liable to compensate or otherwise pay to you or any subcontractor any money that may have been incurred due to termination of this Agreement for any reason.

14 ASSIGNMENT AND SUBCONTRACTING

- (a) We may at any time assign, novate or subcontract any or all of our rights and obligations under this Agreement.
- (b) You must not assign, novate or subcontract this Agreement (or any rights or obligations under it) without our prior written consent, which we may withhold or give subject to conditions.

15 GENERAL

- (a) This Agreement contains the entire agreement between the Parties as to its subject matter.
- (b) The relationship between the Parties under this Agreement does not constitute a partnership, agency, joint venture or any form of fiduciary relationship or contract of employment.
- (c) Time is of the essence in this Agreement.
- (d) Waiver of any provision of or right under this Agreement must be in writing signed by the Party entitled to the benefit of the provision or right being waived.
- (e) This Agreement may only be varied by written agreement signed by both Parties.
- (f) Clauses 2(h), 7, 8, 9, 10 and 11, and any other clause that by its nature is intended to survive termination, survive expiry or termination of this Agreement.
- (g) You warrant to us that you have the power to enter into and perform the obligations of this Agreement without breaching any other legal rights or obligations.
- (h) You agree that your relationship with us is not exclusive. We may enter into arrangements with other parties for similar work.
- (i) All notices, approvals, consents or other communications under this Agreement must be provided in writing to the Representative of the other Party.
- (j) This Agreement may be executed in counterparts.
- (k) This Agreement is governed by the laws of Victoria, and each Party submits to the exclusive jurisdiction of the courts of Victoria.